

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MICHAEL SCOTT, #683064

§

VS.

§

CIVIL ACTION NO. 6:17cv545

C. E. MOORE, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Michael Scott, an inmate previously confined at the Michael Unit of the Texas prison system, proceeding *pro se* and seeking to proceed *in forma pauperis*, brings this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation (Dkt. #5) concluding that the lawsuit should be dismissed for purposes of *in forma pauperis* proceedings pursuant to the “three strikes” provisions of 28 U.S.C. § 1915(g).

Mr. Scott has filed objections (Dkt. #9), along with a motion to proceed *in forma pauperis* (Dkt. #10). He argues that the exception to § 1915(g) should apply because he is under imminent danger of serious physical injury. In the original complaint, he asserted that his life was in danger because of prison gangs, particularly from members of the Aryan Brotherhood and Mexican Mafia. He asked to be transferred from the Michael Unit to another unit. Since then, on October 16, 2017, he submitted a letter (Dkt. #6) noting that he had been transferred from the Michael Unit to the Clements Unit. As such, his lawsuit is moot to the extent that he wants a transfer. At this juncture, to the extent that his life may be in danger at the Clements Unit, he may have a basis for

a lawsuit in the Northern District of Texas. Judge Mitchell appropriately observed that “in order to meet the imminent danger requirement of § 1915(g), the threat must be ‘real and proximate.’” *Beck v. Oliver*, No. 9:12cv108, 2012 WL 4977777, at *3 (E.D. Tex. Sept. 18, 2012) (citations omitted). Any threat Mr. Scott may have had at the Michael Unit was no longer “real and proximate” upon his transfer. The exception to § 1915(g) does not apply.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mr. Scott to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Mr. Scott’s objections lack merit. Therefore the court adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court. It is accordingly

ORDERED that the complaint is **DISMISSED** with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). It is further

ORDERED that Mr. Scott’s motions to proceed *in forma pauperis* (Dkt. ##2,10) are **DENIED**. Mr. Scott may resume the lawsuit if he pays the entire filing fee of \$400 within thirty days after the entry of the Final Judgment. It is finally

ORDERED that all motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this 9 day of November, 2017.



Ron Clark, United States District Judge